

EXHIBIT A

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Electronically FILED by
Superior Court of California,
County of Los Angeles
1/21/2025 4:08 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By J. Mercer, Deputy Clerk

Attorneys for Plaintiff,
BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – LONG BEACH DIVISION
UNLIMITED JURISDICTION**

BOARD OF TRUSTEES OF THE
CALIFORNIA STATE
UNIVERSITY, a public entity

Plaintiff,

v.

LEXINGTON INSURANCE COMPANY, a
Delaware Corporation; and Does 1 through 10,

Defendants.

Case No. **25LBCV00133**

**COMPLAINT & REQUEST FOR JURY
TRIAL**

1. Breach of Insurance Contract
2. Breach of the Covenant of Good Faith
and Fair Dealing
3. Declaratory Relief

Plaintiff BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY alleges
as follows:

FACTUAL BACKGROUND

1. This action arises out of Defendant LEXINGTON INSURANCE COMPANY'S
("Defendant" or "Insurer") breaches of its contractual duties to provide TRUSTEES OF THE
CALIFORNIA STATE UNIVERSITY ("Plaintiff" or "CSU") coverage under its Public Entity
Property Insurance Program ("PEPIP") policy ("Policy") for costs of permanent stabilization of a
hillside located on the campus of California Polytechnic State University, San Luis Obispo ("Cal
Poly"). The hillside was impacted by a landslide on February 18, 2017 during/following an
atmospheric weather event ("the Fremont Hall Landslide"). Cal Poly's Fremont Hall dormitory is
located on this hillside and was rendered uninhabitable for its students because of the landslide.

1 2. The claim for this damage was tendered to Defendant by the California State University
2 Risk Management Authority (“CSURMA”) on behalf of its member institution, CSU/Cal Poly.
3 Defendant issued payment in connection with the proof of loss submitted with respect to certain
4 preliminary repairs that it agreed were deemed “winterization” efforts to temporarily arrest the
5 movement of the slide while a permanent solution could be developed by Cal Poly’s retained
6 engineering firm.

7 3. Cal Poly’s engineer advised that notwithstanding the temporary measures taken to reduce
8 the amount of surface water entering the slide mass, and the partial excavation of the toe and head
9 of the slide, the slide had only been temporarily arrested, and Fremont Hall was not safe for
10 occupancy. It was determined that the only means to repair the damage to Fremont Hall and to
11 restore it to its prior function as a student dormitory was to undertake the permanent stabilization of
12 the hillside. This restoration effort and related costs have totaled in excess of \$20,000,000.

13 4. Insurer communicated its position to CSU that the payments it issued for temporary repair
14 costs are without precedent to future claims for coverage for winterization, or other temporary land
15 stabilization costs. However, Insurer did not reserve its rights to seek reimbursement of these
16 previously paid costs.

17 5. The Insurer asserts that CSU’s claim related to the hillside is excluded under its policy
18 exclusion for “Land, (including land on which covered property is located), and land values (except
19 athletic fields, landscaping, artificial turf, sand traps, tees and greens).” It is Defendant’s position
20 that the land upon which the landslide emanated is not covered property, and therefore it has no
21 obligation to pay the costs of repair of the land. Insurer’s position is incorrect because CSU is
22 seeking coverage for damage to a covered property – Fremont Hall Dormitory. *It is not seeking*
23 *coverage for damage to land.* The cost of permanent repair to the hillside is necessary to repair
24 covered property such that Fremont Hall is rendered safe for the occupancy of CSU’s students and
25 returned to the condition it was in prior to February 18, 2017. In addition, the Insurer has failed to
26 pay other portions of the claim unrelated to the hillside repair which were submitted by CSU and
27 covered under its policy.
28

1 6. By denying CSU coverage, Insurer is in breach of the Policy and has engaged in bad faith
2 conduct in the course of committing this breach. CSU brings this breach of insurance contract, bad
3 faith, and declaratory relief action to seek damages and adjudication that Defendant must provide
4 coverage for the damage to its property covered under the Policy, Fremont Hall and damages for
5 breach of the covenant of good faith and fair dealing.

6 **THE PARTIES**

7 7. Plaintiff CSU is the governing board of the California State University system. CSU is the
8 State of California acting in its higher education capacity, with its principal place of business
9 located in Long Beach, California. CSU's twenty-three campuses include California Polytechnic
10 State University, San Luis Obispo, which is located in San Luis Obispo, California.

11 8. Plaintiff is informed and believes that Defendant is an insurance company issuing policies of
12 insurance to California entities on the surplus line market through surplus lines brokers, and is
13 domiciled in the State of Delaware and headquartered in the State of Massachusetts. Plaintiff does
14 not know the true names of defendants sued herein as Doe 1 through 10 and therefore reserves the
15 right to amend this Complaint when their true identities are known, and are collectively referred to
16 herein as Insurer.

17 9. The Parties have entered into an agreement tolling the statute of limitations that expires on
18 January 22, 2025.

19 **JURISDICTION AND VENUE**

20 10. This Court has jurisdiction over this action because the amount in controversy in this case
21 exceeds \$35,000.

22 11. Venue is proper in the Long Beach division of this Court because the contract to be enforced
23 was made, entered into, to be performed in the County of Los Angeles and was breached in this
24 county.

25 **THE POLICY ISSUED TO CSU**

26 12. In exchange for its premium payment, Insurer issued a Public Entity Property Insurance
27 Program Policy, Form No. 12, through Alliant Property Insurance Program to CSU, bearing Policy
28 No. 017471590/03 (Dec 05) – 0060, with a policy period from July 1, 2016 – July 1, 2017.

1 13. The Policy is an All Risk Policy, meaning the Insured can seek compensation for any event
2 that the insurance contract has not explicitly ruled out as being covered. There is no earth
3 movement or landslide exclusion in the Policy. Damages caused by a landslide are not excluded by
4 the Policy, and the Policy covers landslides as a covered peril. Under the Policy, a covered peril that
5 caused a covered loss is *not excluded*.

6 **RELEVANT POLICY TERMS**

7 **SECTION II. PROPERTY DAMAGE**

8 **A. COVERAGE**

9 Subject to the terms, conditions and exclusions hereinafter contained, this Policy insures all
10 property of every description both real and personal (including improvements, betterments
11 and remodeling), of the Named Insured, or property of others in the care, custody or control
12 of the Named Insured, for which the Named Insured is liable, or under the obligation to
13 insure.

12 **B. EXTENSIONS OF COVERAGE**

13 All coverage extensions are subject to the terms, conditions and exclusions of the policy
14 except insofar as they are explicitly providing additional coverage.

15 **17. PROTECTION AND PRESERVATION OF PROPERTY**

16 In the event of loss likely to be covered by this Policy, the Named
17 Insured shall endeavor to protect covered property from further damage
18 and shall separate the damaged and undamaged personal property and
19 store in the best possible order, and shall furnish a complete inventory of
20 the destroyed, damaged and undamaged property to the Insurer.

19 In case of actual or imminent physical loss or damage of the type insured
20 against by this Policy, the expenses incurred by the Named Insured in
21 taking reasonable and necessary actions for the temporary protection and
22 preservation of property insured hereunder shall be added to the total
23 physical loss or damage otherwise recoverable under the Policy and be
24 subject to the applicable deductible and without increase in the limit
25 provisions contained in this Policy.

23 **20. MISCELLANEOUS UNNAMED LOCATIONS**

24 Coverage is extended to include property at locations (including
25 buildings or structures, owned, occupied or which the Named Insured is
26 obligated to maintain insurance) located within the territorial limitations
27 set by this policy.

26 **C. PROPERTY NOT COVERED**

27 Except as for that which may be provided as an Extension of Coverage, this policy does not
28 cover:

1
2 3. Land (including land on which covered property is located), and land
3 values (except athletic fields, landscaping, artificial turf, sand traps, tees
4 and greens).

5 **D. LOSS PAYMENT BASIS / VALUATION**

6 In case of loss to property of a Named Insured covered hereunder, the basis of adjustment
7 shall be as of the time and place of loss as follows:

8 1. On all real and personal property, including property of others in the
9 care or control of the Named Insured at the replacement cost (as defined
10 below) at the time of the loss without deduction for depreciation. If
11 property is not replaced within a reasonable period of time, then the
12 actual cash value shall apply.

13 2. On improvements and betterments at the replacement cost at time of
14 loss without deduction for depreciation ...

15 **SECTION III. BUSINESS INTERRUPTION, EXTRA EXPENSE, RENTAL**
16 **INCOME, TAX INTERRUPTION AND TUITION INCOME**

17 **A. COVERAGE**

18 **1. BUSINESS INTERRUPTION**

19 Against loss resulting directly from interruption of business, services or
20 rental value caused by direct physical loss or damage, as covered by this
21 Policy to real and/or personal property insured by this Policy, occurring
22 during the term of this Policy.

23 In the event of such loss or damage the Company shall be liable for the
24 actual loss sustained by the Named Insured for gross earnings as defined
25 herein and rental value as defined herein resulting from such interruption
26 of business, services, or rental value; less all charges and expenses
27 which do not necessarily continue during the period of restoration. Due
28 consideration shall be given to the continuation of normal charges and
expenses including payroll expenses to the extent necessary to resume
operations of the Named Insured with the same quality of service which
existed immediately preceding the loss.

2. EXTRA EXPENSE

This Policy is extended to cover the necessary and reasonable extra
expenses occurring during the term of this Policy at any location as
hereinafter defined, incurred by the Named Insured in order to continue
as nearly as practicable the normal operation of the Named Insured's
business following damage to or destruction of covered property by a
covered peril which is on premises owned, leased or occupied by the
Named Insured. In the event of such damage or destruction, the
Company shall be liable for such necessary extra expense incurred for
only such length of time as would be required with the exercise of due
diligence and dispatch to rebuild, repair or replace such part of the
property as has been damaged or destroyed commencing with the date of

1 damage or destruction and not limited by the date of expiration of this
2 Policy (hereinafter referred to as the period of restoration).

3 **SECTION IV. GENERAL CONDITIONS**

4 **A. PERILS COVERED**

5 Subject to the terms, conditions and exclusions stated elsewhere herein, this Policy provides
6 insurance against all risk of direct physical loss or damage occurring during the period of
this Policy.

7 **INSURER BREACHED ITS DUTY TO REIMBURSE CSU**

8 14. CSU gave timely notice to Insurer of its claim for incurred property damage, extra expenses,
and loss of business income as a result of the Fremont Hall Landslide.

9 15. Insurer issued partial payment in connection with the proof of loss submitted by CSU with
10 respect to certain preliminary repairs that Insurer deemed "winterization" efforts to temporarily
11 arrest the movement of the slide while a permanent solution could be developed by Cal Poly's
12 retained engineering firm.

13 16. Cal Poly's engineering firm advised that notwithstanding the temporary measures taken to
14 reduce the amount of surface water entering the slide mass, and the partial excavation of the toe and
15 head of the slide, the slide had only been temporarily arrested, and Fremont Hall was not safe for
16 occupancy. In fact, there has been subsequent earth movement impacting Fremont Hall since the
17 February 2017 landslide.

18 17. Based on the engineering advice, it was determined that the only means to repair the damage
19 to Fremont Hall and to restore it to its prior function as a student dormitory was to undertake the
20 permanent stabilization of the hillside.

21 18. Insurer wrongfully refused to pay the costs for permanent stabilization of the hillside based
22 upon the policy exclusion for "Land, including land on which covered property is located), and land
23 values (except athletic fields, landscaping, sand traps, tees and greens)." Insurer wrongfully asserted
24 that because the land upon which the landslide emanated is not covered property, it has no
25 obligation to pay the costs to repair the land, notwithstanding that such repair is the only means by
26 which the damage to covered property (Fremont Hall) can be repaired and the covered property
27 restored to its use as a dormitory.
28

1 19. Insurer communicated that it would consider all of the measures implemented in February,
2 March and/or April of 2017 as qualifying for coverage under B. EXTENSIONS OF COVERAGE,
3 item 17. PROTECTION AND PRESERVATION OF PROPERTY. However, Insurer further
4 advised that “[b]ecause the Land Exclusion does not distinguish between permanent and temporary
5 repair of land, Lexington has very serious concerns that the latter also falls within
6 the [Land] exclusion. By agreeing to pay for winterization in this case, Lexington is not admitting
7 liability for such work.”

8 20. Contrary to Insurer’s basis for denying coverage for the costs to repair Fremont Hall
9 measured by the costs to stabilize the hillside, the Policy does not contain a provision stating that
10 the land exclusion applies where the repair to land is necessary to restore covered property to its
11 prior use. The Policy is an All Risk policy. There is no earth movement or landslide exclusion, and
12 damage caused by a landslide is not specifically excluded by the policy.

13 21. The policy includes landslides as a covered peril, and a covered peril that caused a covered
14 loss is not excluded.

15 22. CSU is not seeking coverage because of damage to the subject hillside itself. CSU concedes
16 that pure damage to land alone (i.e., without impact to covered property) would fall under the
17 Policy’s land exclusion. Rather, CSU is seeking coverage for the damage to the dormitory and its
18 water system, which are covered property under the Policy. Part of this damage repair requires
19 stabilization of the hillside.

20 23. CSU is informed and believes and thereon alleges that Insurer has an obligation to provide
21 coverage for the costs associated with the restoration of the hillside upon which Fremont Hall, a
22 covered property under the Policy, is located. As a result of Insurer’s failure to do so, CSU has been
23 forced to incur these costs itself, notwithstanding its Policy from Insurer.

24 24. By refusing to pay CSU’s costs associated with the restoration efforts of Fremont Hall, and
25 other claims for loss submitted to Insurer which have not been reimbursed, Insurer has breached the
26 duty to reimburse CSU for its losses afforded by Policy No. 017471590/03. Insurer’s breach of the
27 insurance contract has caused damage to CSU, including, but not limited to, monetary damages
28

1 associated with property damage, extra expense, business interruption and other losses covered
2 under the Policy.

3 25. CSU is entrusted to responsibly manage the property and assets within its control. CSU
4 obtained insurance to avoid financial risks such as the impacts from the subject landslide. As a
5 result of Insurer's failure to fulfil its obligations under the Policy, CSU has paid for repairs and has
6 sustained losses that it should not have suffered.

7 **INSURER'S BAD FAITH DENIAL OF COVERAGE**

8 26. In denying CSU the coverage for the Fremont Hall Landslide to which it is entitled, Insurer
9 has acted in bad faith. Insurer has acted unreasonably and in bad faith by adopting an unreasonably
10 narrow, constrained interpretation of the Policy. There is no language in the Policy that excludes the
11 costs of repairing land as an item of damage necessary to the repair of covered property in order to
12 restore that covered property to its original use. The Policy should be subject to CSU's reasonable
13 expectation of coverage that costs to repair land to remediate the damage to covered property is
14 covered without regard to the fact that the land itself is not covered property.

15 **FIRST CAUSE OF ACTION**

16 **BREACH OF CONTRACT – DUTY TO REIMBURSE COSTS OF REPAIR**

17 27. CSU incorporates herein by reference each of the foregoing and each of the subsequent
18 paragraphs of this Complaint.

19 28. CSU has performed all covenants and conditions required under Policy No. 017471590/03.
20 All premiums due under this policy have been paid in full.

21 29. By refusing to honor its contractual obligations under the Policy to cover CSU's costs for
22 the permanent stabilization of the hillside and the restoration of Fremont Hall as a habitable
23 building, and other claimed losses submitted which remain unpaid, Insurer has breached its duty to
24 reimburse CSU for its losses. This breach is ongoing.

25 30. As a direct and proximate result of Insurer's breach of its contractual duties, CSU has
26 incurred costs and expenses totaling over \$20,000,000, which is continuing. CSU seeks damages
27 according to proof at trial.
28

SECOND CAUSE OF ACTION

BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING

31. CSU incorporates herein by reference each of the foregoing and each of the subsequent paragraphs of this Complaint.

32. Implied in every contract of insurance is a covenant of good faith and fair dealing which obligates insurers, including Insurer, to act at all times in good faith towards their insureds, including CSU.

33. CSU reasonably expected that Insurer would deal with CSU fairly, equitably, and in good faith, and would fulfill its contractual duty to protect CSU by providing coverage for its damaged property covered under the Policy.

34. CSU's expectations were brought about and intended by Insurer as a result of, *inter alia*, the contractual language in the Policy, and by representations made by Insurer to CSU with respect to the scope of the coverage of the Policy.

35. Insurer has breached its obligation to act in good faith by:

- a. Failing to act in accordance with the law and its duties to CSU as set forth herein.
- b. Relying on an unreasonably narrow, constrained interpretation of the Policy so as to deny CSU the coverage it is entitled to.
- c. Compelling CSU to seek legal redress to obtain benefits to which CSU is entitled under the Policy.

36. The acts and omissions of Insurer set forth herein were committed in bad faith, intentionally and/or with conscious and reckless disregard of CSU's rights by denying the very benefits which CSU bargained and paid substantial premiums for.

37. CSU alleges that Insurer's motivation in failing to act in good faith by providing the coverage CSU is entitled to is to avoid its obligation to reimburse CSU for sums that it has paid out of necessity in order to repair covered property and restore Fremont Hall to its previous, habitable condition. CSU alleges Insurer's coverage position in this matter is designed to unfairly maximize its own profits at CSU's expense.

1 38. As a direct and proximate result of Insurer's breach of the implied covenant of good faith
2 and fair dealing contained in the Policy, CSU has suffered, and continues to suffer, general and
3 consequential damages, in an amount to be proven at trial.

4 39. In addition to the damages alleged in this Complaint, CSU's damages include the costs,
5 expenses, and attorneys' fees incurred by CSU in this litigation to obtain the contractual benefits to
6 which CSU is entitled under the Policy.

7 **THIRD CAUSE OF ACTION**

8 **FOR DECLARATORY RELIEF AND JUDGMENT**

9 40. CSU incorporates herein by reference each of the foregoing and each subsequent paragraphs
10 of this Complaint.

11 41. An actual and justiciable controversy exists between CSU and Insurer regarding Insurer's
12 duties and obligations to pay CSU's costs for the permanent stabilization of the hillside and the
13 restoration of Fremont Hall.

14 42. Alternatively, CSU seeks a judicial declaration regarding the scope of coverage available to
15 CSU under the Policy issued by Insurer.

16 43. A judicial declaration is necessary and appropriate at this time under the circumstances in
17 order that CSU and Insurer may ascertain their duties, rights, and responsibilities pursuant to the
18 Policy issued by Insurer to CSU.

19 WHEREFORE, PLAINTIFF prays for judgment as follows:

20 1. For general, incidental, and consequential damages according to proof at trial.

21 2. For judicial declarations that:

22 a. The land exclusion of the Policy on which Insurer bases its denial of coverage does
23 not apply to CSU's claims arising from the 2017 landslide, including, *inter alia* damage to Fremont
24 Hall.

25 b. Insurer is obligated to provide coverage to CSU pursuant to the Policy.

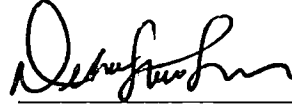
26 3. For CSU's attorneys' fees and costs incurred herein in establishing Insurer's coverage
27 obligations under the Policy; and,

28 4. For such other relief as the Court deems just and proper.

1 DATED: January 21, 2025

LERCH STURMER LLP

2
3 By:



Debra Steel Sturmer
Sara P. Douglass
Attorneys for Plaintiff BOARD OF
TRUSTEES OF THE CALIFORNIA STATE
UNIVERSITY

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8 **REQUEST FOR JURY TRIAL**

9 Plaintiff BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY hereby
10 respectfully requests a jury trial.

11 DATED: January 21, 2025

LERCH STURMER LLP

12
13 By:



Debra Steel Sturmer
Sara P. Douglass
Attorneys for Plaintiff BOARD OF
TRUSTEES OF THE CALIFORNIA STATE
UNIVERSITY